

## **Governor's Task Force on Elder Abuse: Draft Recommendations**

**Key Issue #1: There is a lack of understanding about what constitutes elder abuse and no central organization responsible for coordinating elder abuse prevention activities throughout Michigan.**

### **Approved Recommendations:**

- 1. Elder Abuse Authority:** Create or designate an organization, entity, and/or commission, including the public and private sector, to be responsible for overseeing the implementation of the Elder Abuse Task Force recommendations, coordinating and integrating multiple state agencies responsible for elder abuse prevention and protection services, integrating data systems, and conducting public awareness campaigns.
- 2. Social Marketing/Public Awareness Campaign:** Create public awareness programs (i.e., media campaigns, education, training, and outreach) to promote social responsibility in preventing and addressing elder abuse, neglect, and exploitation.

**Key Issue #2: There is a lack of a comprehensive approach to preventing physical/emotional abuse and neglect of elders.**

### **Approved Recommendations:**

- 3. Rights of the Incapacitated:** Introduce legislation that 1) establishes the rights retained by those who are deemed "incapacitated" and in need of a guardian, 2) identifies rights that can be removed from people who are deemed "incapacitated", and 3) requires specific grants of authority by the Probate Court regarding certain powers delegated to guardians.
- 4. Guardianship:** Identify resources to support the implementation of the recommendations of the 1998 Michigan State Supreme Court Guardianship/Conservatorship Task Force and expand the recommendations to minimize or prevent abuse and neglect by guardians.
- 5. Home Health Agency/Direct Care Workers:** Establish an in-home care regulatory and education study committee, comprised of public and private stakeholders, to review existing laws/regulations, make recommendations, provide oversight of the implementation of those recommendations, and identify and review outcome measures to prevent or reduce the risk of elder abuse, neglect, and exploitation by individuals and business organizations providing in-home services of any kind, particularly those agencies that are not certified by Medicare or Medicaid.
- 6. Health Professions Training:** Develop and implement a curriculum to train healthcare professionals to understand and address the abuse/suspected abuse and neglect of elder patients.
- 7. Caregiver Support:** Facilitate an increase in awareness of contributing factors of elder abuse perpetrated by caregivers.
- 8. Respite Services:** Facilitate the awareness and use of respite services for caregivers at risk of being involved in abuse.
- 9. Mental Health:** Work with local, statewide, and national disease-focused associations and initiatives to increase the availability and use of mental health services by caregivers.

### **Recommendations Pending Approval:**

- 10. Waiver of Liability:** Create a waiver of liability for physicians who report all forms of elder abuse, similar to the waiver concerning violence, as outlined in MCL 750.411.

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### **Key Issue #3: There is a lack of a comprehensive approach to preventing financial exploitation.**

#### **Approved Recommendations:**

- 11. False Claims Act:** Support the awareness of and increase the prudent use of the Federal and Michigan False Claims Acts to root out and discourage cases of fraud related to abuse. Billing for goods and services that were never delivered or rendered, but were beneficial or would have been necessary to support the health and well-being of the elderly beneficiary constitutes elder abuse.
- 12. Conservatorship:** Identify resources to support the implementation of the recommendations of the 1998 Michigan State Supreme Court Guardianship/Conservatorship Task Force and expand the recommendations to minimize or prevent financial exploitation by guardians and conservators.
- 13. Guardianship:** Define the limit on the amount of liquid assets a guardian can control to a specific amount such as \$5,000, since guardians are not required to file an accounting under the current system.
- 14. Cross licensing:** A person whose license is suspended for abuse, neglect, or exploitation of a vulnerable adult should have licenses suspended for the same time period in other related regulated professions. To the extent possible, such persons should be barred from materially participating in such licensed businesses during the extent of the suspension.
- 15. Consumer Protections:** Amend the Consumer Protection Act to allow claims to be brought against persons who use unfair, deceptive, or unconscionable methods, acts, and practices in marketing legal and financial products to the elderly. .
- 16. Disclosure Mechanisms:** Form ongoing work groups, represented by public, private, and non-profit sectors, to develop best practices and disclosure guidelines for each industry with seniors in mind.
- 17. Annuities:** (A) The State should adopt the Uniform Securities Act in a form that treats annuities as securities and regulates them under the authority of the State Securities Commissioner. (B) The Elder Abuse Authority should lead an educational and advocacy campaign about annuities fraud.
- 18. Voluntary Bank Projects:** Promote voluntary projects in banks and financial institutions to address financial exploitation.
- 19. Project Gatekeeper:** Require Area Agencies on Aging to build upon and follow the results of Project Gatekeeper, to minimize financial exploitation, as implemented by The Senior Alliance, Area Agency on Aging 1-C, Neighborhood Legal Services Elder Law Center, Oaklawn Healthcare System, and partnering financial institutions.
- 20. Joint Bank Accounts:** Require financial institutions to read a disclosure to the customer who wants to create a joint bank account and have the customer sign acknowledging the true nature of the account.
- 21. Appraisal Fraud:** Ensure that home appraisals are accurate, that appraisers do not inflate property values, and that lenders do not influence the appraisal process. (A) Establish an automated system that selects appraisers from panels created by each state. (B) Amend Michigan's appraiser licensing code to incorporate West Virginia's licensing provisions which specifically sanction appraisers who inflate or manipulate appraisal values.
- 22. Transfer on Death:** Adopt a statute like Ohio's Transfer on Death Deeds to allow real property to automatically transfer to the named beneficiary upon the death of the owner.
- 23. Fraudulent Demand Drafts:** Amend the Uniform Commercial Code to shift the risk of loss for a fraudulent demand draft to the payee's bank, not the payor's.

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**Key Issue #3: There is a lack of a comprehensive approach to preventing financial exploitation (continued).**

### **Recommendations Pending Approval:**

- 24. Disinheriting Abusers and Exploiters:** Revise EPIC (the Probate Code) to indicate that any individual who abuses, neglects, exploits, or kills an elderly person forfeits all benefits with respect to the decedent's estate.
- 25. Financial Exploitation of Nursing Home Residents:** Strengthen efforts to investigate whether nursing home residents have been exploited or abused prior to admission in the facility and use the full range of laws to remedy such problems and deter future bad acts.
- 26. Notary Requirements:** Discourage notarization of documents that might facilitate financial exploitation.
- 27. Fiduciary Accountability:** Create and standardize a (credit/debit) card-technology-based accounting system for persons acting in the role of fiduciary for vulnerable adults and as an option for all elders.
- 28. Elder Safe Zone:** Work with key financial institutions and lawmakers to explore the creation of a financial product in the form of a trust that will act as an "elder safe zone" within the private sector.
- 29. Power of Attorney:** Create a statute to provide that Durable Powers of Attorney shall be registered, prior to use, on a web-based registry and require the agent to sign an acknowledgment of duties informing him/her of his/her responsibilities, which results in a Certificate of Registration, validating the POA.
- 30. Uniform Power of Attorney Act:** Support legislative approval of House Bill 5677 (the Uniform Power of Attorney Act), with certain revisions. (Introduced Feb. 14, '06 and referred to Committee on Judiciary.)

**Key Issue #4: There is not an effective system for individuals or organizations to report suspected abuse.**

### **Approved Recommendations:**

- 31. Central 800#:** Promote the hotline used by Adult Protective Services as the statewide toll-free number to report elder abuse, 1-800-996-6228.
- 32. Nursing Home and Hospital Employee Reporting Requirements:** Change reporting requirements in nursing homes and hospitals so that employees are not mandated by law to report abuse to their supervisors. All mandatory reporters should report to the agency of jurisdiction without exception. Reporters are allowed to report anonymously by law.
- 33. Mandatory Reporting by Financial Institutions:** Require financial institutions to be mandatory reporters of suspicious financial activity. Include a provision that waives liability for good faith reports and a provision for mandatory training of bank staff.
- 34. Union Networks for Direct Care Workers:** Establish public/private partnerships with unions and other groups representing non-licensed direct care workers to enhance awareness of elder abuse, craft appropriate courses of action when union workers identify cases of abuse, and investigate the willingness of union officials to act as the conduit for reporting elder abuse when workers are unable or unwilling to come forth individually.

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### **Key Issue #5: There is not a coordinated system to investigate suspected abuse.**

#### **Approved Recommendations:**

- 35. Elder Abuse Community Investigation Teams:** Establish multi-disciplinary Elder Abuse Community Investigation Teams throughout the State of Michigan to identify, investigate, and address all cases of suspected elder abuse within their own community.
- 36. Adult Protective Services:** Increase the number of APS caseworkers to ensure that Child Protective Services (CPS) workers are not required to handle adult cases in addition to child abuse cases.
- 37. Mandatory Reporting of Deaths in Long-term Care Facilities:** Establish a mandatory requirement for long-term care facilities to report all deaths of residents that occur in the facility to Law Enforcement.

#### **Recommendations Pending Approval:**

- 38. Elder Abuse Resource Prosecutor:** Establish an Elder Abuse Resource Prosecutor role within the Prosecuting Attorneys Association of Michigan to coordinate the development of Elder Abuse Community Investigation Teams, customized to meet the unique resource requirements of each community.
- 39. MCOLES Police Academy Training:** Michigan Commission on Law Enforcement Standards (MCOLES) Police Academy Training: Subject matter experts will collaborate with the MCOLES to improve existing holistic training to enhance the awareness and understanding of vulnerable adult abuse in the basic training for all recruits of the police academy.
- 40. Elder Justice Act:** Urge Congress to pass the Elder Justice Act.

### **Key Issue #6: There is an inability to create a deterrent through effective prosecution of abuse.**

#### **Approved Recommendations:**

- 41. Sentencing Guidelines:** Increase the criminal penalties for those who physically abuse and financially exploit vulnerable adults by changing the sentencing guidelines.
- 42. Consecutive Sentences:** Give the sentencing judge the discretion to impose a consecutive sentence when the criminal commits crimes against more than 1 vulnerable adult.
- 43. Maximum Penalties:** Increase the maximum penalties for vulnerable adult abuse in the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> degree (recommend that the maximum penalty for these crimes be doubled).
- 44. Penalty for Death in Unlicensed Care Facility:** Increase the penalty for a death that occurs in an unlicensed care facility from a maximum of 5 years to 15 years.
- 45. Obstructing an Investigation of an Adult Care Facility:** Increase the penalties (double) for obstructing an investigation of an adult care facility.
- 46. Financial Exploitation Penalties:** Increase the penalties for stealing more than \$50,000 and \$100,000 from a vulnerable adult by creating two new crime levels.
- 47. Unjust Enrichment:** Develop a statutory definition of criminal unjust enrichment.
- 48. Consent:** Create a written definition of what is required in order for a vulnerable adult to be said to consent to an activity/action.

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### **Key Issue #6: There is an inability to create a deterrent through effective prosecution of abuse.**

#### **Approved Recommendations (continued):**

- 49. Abandonment:** Amend the APS law to add "abandonment" to the definition of neglect by a caregiver of an impaired vulnerable adult and make it a crime.
- 50. Isolation:** Amend the APS law to add "isolation when intentional and against their will" to the definition of abuse of an impaired vulnerable adult and make it a crime to prevent access or communication to/from the vulnerable adult.
- 51. Fraudulently Obtaining a Signature:** Revise 750.273 in the criminal code to make it more applicable to situations of financial exploitation.
- 52. Hearsay:** Create a special hearsay exception to the rules of evidence for statements of an elder person who dies before trial, or whose physical or mental state deteriorates to the extent that they cannot testify.
- 53. Extortion:** Amend the extortion statute, MCL 750.213, to include threatening a vulnerable adult with a nursing home placement or guardianship, or the threatened withdrawal of needed care or services.
- 54. Videotaped Testimony:** Allow the testimony of a vulnerable adult to be presented by videotape or closed circuit television.
- 55. Criminal Complaint:** Eliminate a magistrate's ability to require a vulnerable adult to sign a criminal complaint.
- 56. Restitution:** Establish a restitution system in Michigan to increase the collection of restitution to victims and recover court fines and fees from convicted offenders.
- 57. Elder Friendly Disciplinary Hearings:** SOAR should solicit information from experts to create an environment in proceedings investigating claims of elder abuse or exploitation of seniors that make it easier for seniors to participate more fully and receive true access to justice.

#### **Recommendations Pending Approval:**

- 58. Caretaker Influence/Undue influence:** Heighten the threshold for transactions benefiting a caretaker such that any transaction (including conveyances and estate plans) that benefits the caretaker of a vulnerable adult must be prepared and witnessed by a disinterested attorney.
- 59. Financial Protection Orders:** Authorize expedited, ex-parte financial protection orders.
- 60. "Fast Tracking" of Cases:** Support "fast tracking" of elder abuse cases through the criminal justice system.

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**Key Issue #7: There is a lack of comprehensive data available to effectively determine the magnitude of elder abuse in Michigan or to measure the effectiveness of programs designed to prevent or address elder abuse.**

### **Recommendations Pending Approval:**

- 61. Integrated Public/Private Sector, Web-based Database:** Create and maintain a web-based database, integrated with existing reporting systems statewide, dedicated to the useful and efficient collection of data on (a) reported cases of elder abuse, (b) the routing of these reports to responsible parties, and (c) the action taken on these reports on a statewide basis.
- 62. Clearinghouse on Abuse and Neglect of the Elderly:** Create and maintain a useful and efficient web-based clearinghouse dedicated to the location, dissemination, and facilitation of exchange and collaboration between all individuals and groups working against elder abuse in Michigan.